

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3067 of 1997

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAVITABEN D BAROT

Versus

STATE OF GUJARAT

Appearance:

MR NITIN N PANDYA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3, 4

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 03/09/97

ORAL JUDGEMENT

The petitioner herein is a primary school teacher who claims the seniority on the principle of continuous officiation. The facts leading to the present case are as under :

2. The petitioner was appointed as primary teacher under the Mehsana District Panchayat on 23rd December,

1968. At the request made by the petitioner, she was transferred to Naroda on 15th September, 1973. On further request made by her, on 18th September, 1975, the petitioner was transferred to Gandhinagar City. It appears that on 1st May, 1976, Gandhinagar City was ordered to be treated as separate educational district i.e. separate district committee was formed for the primary schools situated within the area of Gandhinagar Township. Thus, a separate seniority of primary school teachers serving in the primary school situated within the area of Gandhinagar Township was maintained. A seniority list of such teachers was prepared sometime in the year 1981. The petitioner's seniority in the said seniority list was determined on the basis of her transfer to Gandhinagar City made on 18th September, 1975. This seniority has prevailed all along.

3. Feeling aggrieved by the above referred seniority list, some primary school teachers serving in the Gandhinagar Township challenged the said seniority list by preferring writ petitions being special civil applications Nos. 3162 of 1981 and 3713 of 1981. Said petitions were decided and disposed of by this court [Coram: Mr.Justice N.J.Pandya] under its judgment and order dated 3rd July, 1992.Considering the scheme of the provisions of the Primary Education Act 1947, the provisions contained in rule 40 of the Bombay Primary Education Rules, 1949, and the Government Resolutions passed from time to time in this behalf, learned Judge held that the transfers of primary teachers prior to the issuance of the Government Resolution dated 30th July, 1977 shall be governed by the terms and conditions of transfer prescribed under rule 40 of the Bombay Primary Education Rules, 1949. The Court, therefore, held that in the cases of the inter district transfers effected prior to 30th July, 1977, seniority would be governed by the terms and conditions of such transfer. In absence of any specific terms for loss of seniority, a primary teacher would be entitled to seniority on the principle of continuous officiation i.e. from the date of his/her entry in service as primary school teacher. Said judgment has been followed by this Court [Coram:Mr. Justice J.M.Panchal] in special civil application No. 3156A of 1983 decided on 4th April, 1994.

4. The petitioner claims a similar benefit It is the claim of the petitioner that while her request for transfer to Gandhinagar City was accepted by the concerned district primary education committees, no term or condition in respect of loss of seniority was imposed in the order of transfer. In absence of any specific

condition imposed in the permission granted by the concerned District Education Committees, the petitioner cannot be made to lose the seniority and in view of the above referred two judgments, she is entitled to seniority from the date of her entry in service i.e. from 23rd December, 1968. In support of her claim, she has placed copy of the order of transfer made on 1st September, 1975 at annexure "A" to the petition. Upon perusal of the said order, it appears that no specific terms and conditions were prescribed while granting petitioner's request for transfer to Gandhinagar City. Even respondent No. 3 has not come forth before this Court controverting the facts stated in the petition. In absence of any opposition, averments made in the petition and supported by the documentary evidence are required to be accepted. Petitioner is, therefore, entitled to a declaration that she is entitled to seniority amongst the primary school teachers serving under respondent No. 4 on the basis of the principles of continuous officiation.

5. However, it should be noted that even prior to her transfer to Gandhinagar city, the petitioner was transferred on 15th February, 1973 to Naroda at her request. I do not find any averments in the petition as regards the terms and conditions of said transfer of the petitioner to Naroda on 15th February, 1973. In case, the petitioner was transferred to Naroda on condition of losing her seniority for the services rendered under the Mehsana District, same shall prevail and the petitioner cannot claim seniority from the date of continuous officiation i.e. from 23rd December, 1968. Besides, the petitioner has challenged her seniority in the year 1997. Said seniority is determined in the year 1981 and has remained in force for all these sixteen years. The petitioner has not raised any dispute regarding her seniority within reasonable period. The petitioner has slept over her rights for a long period of 16 years and has permitted the rights to be crystallized. If the said seniority is now disturbed after such a long period, the right to promotion/selection grade accrued to the other primary teachers maybe adversely affected. It appears that the petitioner having learnt that the other primary teachers who approached this court in the year 1981 and 1983 respectively have succeeded before this court, the petitioner has now raised this dispute after sixteen years. Further, this court had decided the issue as far back as on 3rd July, 1992 followed by an order made on 4th April, 1994. Even after those judgments are rendered, the petitioner has permitted time to lapse for nearly three years and has preferred this petition as late as on 21st April, 1997. I am, therefore, of the

opinion that the petitioner cannot be granted relief after more than sixteen years. The petitioner must be held to have acquiesced in her seniority from the date of her transfer to Gandhinagar City. The claim of the petitioner for seniority from 29th December, 1968 is, therefore, rejected. Petition is dismissed. Rule is discharged. Petitioner shall bear costs of this petition.
